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Attorney for the Plaintiff

**UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT
OF TEXAS HOUSTON DIVISION**

LEAH JAKUBIK,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY

Defendant.

CASE NO.:

COMPLAINT FOR:

Failure to Provide Plan Benefits under
29 U.S.C. §1132(a)(1)(B)

COMPLAINT FOR LIFE INSURANCE BENEFITS UNDER ERISA

COMES NOW the Plaintiff, LEAH JAKUBIK, by and through the undersigned attorney, for her Complaint against Defendant, THE LINCOLN NATIONAL LIFE INSURANCE COMPANY and alleges as follows:

PARTIES

1. Plaintiff Leah Jakubik (“Ms. Jakubik”) is a resident of Fort Bend County, Texas.

2. Defendant The Lincoln National Life Insurance Company (“Lincoln Financial”) is an Indiana insurance company authorized to conduct business in Texas. Lincoln Financial issued a Group Life Insurance Policy (“the “Policy”) which is an employee welfare benefit policy within the meaning of the Employee Retirement Income Security Act (“ERISA”), as amended, 29 U.S.C. § 1001, et seq. The Policy is sponsored by Texas Oil & Chemical Co II (“Texas Oil”) for the benefit of certain of its employees. Lincoln Financial may be served at its headquarters located at 1300 S. Clinton Street, Fort Wayne, Indiana, 46802-3518.

JURISDICTION AND VENUE

3. Pursuant to 29 U.S.C. §1132(e) and 28 U.S.C. § 1331, this Court has original subject matter jurisdiction because this Complaint arises under ERISA.

4. Pursuant to 29 U.S.C. §1132(e), venue is proper in this Court because certain Plan benefits were denied to Plaintiff in this District.

FACTUAL ALLEGATIONS

5. Plaintiff is an employee of Texas Oil.

6. As a Policy participant, Ms. Jakubik elected and was provided with spousal coverage life insurance which insured the life of her husband, Timothy Jakubik (“Mr. Jakubik”) in the amount of \$30,000.00.

7. Mr. Jakubik named Plaintiff his sole beneficiary for life insurance benefits provided pursuant to the Policy.

8. Mr. Jakubik died on October 13, 2021 and after Plaintiff submitted her claim for

benefits under the life insurance policy, Lincoln Financial denied her claim.

9. The November 9, 2021, denial letter provides in part as follows:

Please refer to the Dependents Life Insurance section of the policy regarding the Delayed Effective Date. DELAYED EFFECTIVE DATE. If a Dependent is in a Period of Limited Activity on the day his or her Dependent Life Insurance would otherwise take effect; then insurance for that Dependent will not take effect until the day after:

*(1) his or her final discharge from the health care facility; or
(2) resuming the normal activities of a healthy person of the same age and sex.*

"Period of Limited Activity" means a period when a spouse or child is confined in a health care facility; or, whether confined or not, is unable to perform the regular and usual activities of a healthy person of the same age and sex.

Based on the Medical Records from Memorial Hermann Healthcare System and Texas Oncology Mr. Jakubik was diagnosed with Malignant Neoplasm of the head of the pancreas in 07/2021. You and Mr. Jakubik later married on 08/31/2021 which would have been determined a as Qualifying Event for enrollment but due to policy provisions this claim will be denied based on the Delayed Effective Date and Period of Limited Activity described above.

A copy of the November 9, 2021, denial letter is incorporated by reference as Exhibit A.

10. Ms. Jakubik appealed the denial which was upheld by Lincoln Financial via letter dated December 7, 2022, on the same grounds. A copy of the December 7, 2022, appeal denial letter is incorporated by reference as Exhibit B.

11. Defendant wrongly and unreasonably denied coverage by concluding that Mr. Jakubik was “unable to perform the regular and usual activities of a healthy person of the same age and sex” when he was certainly able to do so.

12. Plaintiff has exhausted her administrative remedies.

13. As of the date of this Complaint, Defendant has failed to pay Plaintiff life insurance benefits of \$30,000.00 pursuant to the terms of the Policy.

COUNT I
(Action for Plan Benefits 29 U.S.C.
§1132(a)(1)(B))

14. Plaintiff incorporates the allegations contained in paragraphs 1 through 13 above, and further states:

15. Plaintiff has fulfilled all conditions for receipt of benefits under the Policy and has presented such evidence to Defendant.

16. Defendant has wrongfully denied Plaintiff the life insurance benefits provided by the Policy.

17. Defendant has made unsupported factual conclusions, and has misconstrued the terms of the Plan, in reaching its determination to deny Plaintiff's claim.

18. Defendant's denial of Plaintiff's claim for benefits is a result, at least in part, of the conflict between Defendant's fiduciary obligations to plan participants when determining claims under the Plan, and its interest in maximizing its own profitability.

19. This result of this conflict of interest has been demonstrated in a number of ways, including but not limited to the fact that Defendant insures the plan and also determines whether a claimant is entitled to benefits.

20. Defendant's denial of Plaintiff's claim for benefits is contrary to the terms of the Policy and contrary to the evidence and information submitted to Defendant, making its denial of Plaintiff's claim wrongful.

21. Plaintiff has incurred, and will continue to incur, attorneys' fees, costs, and expenses in bringing and prosecuting this action. Plaintiff is entitled to an award of such attorneys' fees, costs, and expenses pursuant to 29 U.S.C. § 1132(g).

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor, and against Defendants by entering judgment requiring Defendants to pay Plaintiff the \$30,000 policy benefit owed, pre- and post-judgment interest to the maximum extent allowed by law, her attorneys' fees, cost, and expenses and such other and further relief as is just and proper.

Dated: January 12, 2022

Respectfully submitted,

WADLER, PERCHES, HUNDL & KERLICK
Attorneys for Plaintiff

BY: /s/Ray Kerlick/s/

I. Ray Kerlick

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November 09, 2021

**The Lincoln National Life
Insurance Company**
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Omaha, NE 68114-4066
toll free (800) 423-2765
www.LFG.com

LEAH FRASER
PO BOX 305
NEEDVILLE TX 77461

RE: PolicyHolder: Texas Oil & Chemical Co li
Policy Number: 000400261345-00000
Claim Number: 1101521-1275120
Decedent: Timothy Jakubik

Dear Ms. Fraser:

We have completed a full review of the above referenced claim for insurance benefits. Unfortunately, we are unable to pay the Voluntary Spouse Life proceeds.

Please refer to the Dependents Life Insurance section of the policy regarding the Delayed Effective Date.

DELAYED EFFECTIVE DATE. If a Dependent is in a Period of Limited Activity on the day his or her Dependent Life Insurance would otherwise take effect; then insurance for that Dependent will not take effect until the day after:

- (1) his or her final discharge from the health care facility; or
- (2) resuming the normal activities of a healthy person of the same age and sex.

"Period of Limited Activity" means a period when a spouse or child is confined in a health care facility; or, whether confined or not, is unable to perform the regular and usual activities of a healthy person of the same age and sex.

Based on the Medical Records from Memorial Hermann Healthcare System and Texas Oncology Mr. Jakubik was diagnosed with Malignant Neoplasm of the head of the pancreas in 07/2021. You and Mr. Jakubik later married on 08/31/2021 which would

have been determined a as Qualifying Event for enrollment but due to policy provisions this claim will be denied based on the Delayed Effective Date and Period of Limited Activity described above.

You or your authorized representative may request a review of your denied claim. Such request must be made in writing and submitted to us at the address below within 60 days after you receive this denial notice.

Risk Services
The Lincoln National Life Insurance Company
PO Box 2337
Omaha, NE 68103
Fax: 402-361-1460
Email: LFGAppeals@LFG.com

Please include your reason(s) for appealing and provide any proof, including pertinent medical information, to support your appeal. We will then provide you with a full written explanation of the decision within 60 days of receipt of your appeal.

Please be sure to include your policy number and claim number. If you wish, you may also submit your comments and views of the issues in writing and may request copies of the pertinent documents.

If your plan is subject to ERISA, you and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U. S. Department of Labor Office and your State insurance regulatory agency. In addition, once all required reviews of your claim have been completed; you have the right to bring a civil action under applicable law.

If you have any questions regarding this matter, please contact our office at 1-800-423-2765.

Sincerely,

Jessica Ross
Claims Examiner II, Group Claims
The Lincoln National Life Insurance Company

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Lincoln
Financial Group®

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Insurance Company
8801 Indian Hills Drive
Omaha, NE 68114-4066

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LEAH FRASER
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NEEDVILLE TX 77461-0305

00000033 LFPC7LD1 00000091

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October 27, 2022

The Lincoln National Life
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Service Office:
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Omaha, NE 68114-4066
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www.LFG.com

WADLER PERCHES HUNDL KERLICK
RAY KERLICK
101 WEST BURLESON
WHARTON TX 77488

RE: PolicyHolder: Texas Oil & Chemical Co li
Policy Number: 000400261345-00000
Claim Number: 1101521-1275120
Claimant: Timothy Jakubik

Dear Mr. Kerlick:

This letter is in regard to the Group Life appeal for the above referenced claimant.

It was necessary to have a medical review completed on the file. Attached, please find a copy of the completed report.

As a result of this review, we are unable to overturn our previous decision at this time. We are writing today to give you the opportunity to provide this assessment to your treating physician for further review. If your physician should disagree with the assessment then we would appreciate any information that he or she could provide to us that would dispute the enclosed findings.

We are asking that any response to this communication be returned to our office within 21 days or by November 17, 2022.

If you will not be submitting a response to the enclosed review, please advise us in writing so that we may conclude our review of his appeal.

For your convenience, any responses may be faxed to 1-402-361-1460.

We are not making a final determination on your client's disability claim at this time, as we want to provide you with every opportunity to submit a complete appeal.

Packet: 900120

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EXHIBIT
B

However, if we do not receive additional information from you by November 17, 2022, then we will continue with our review and render a determination.

Please contact our office with any questions you may have at the number above.

Sincerely,

Mary Newman
Consultant, Appeals Claims
The Lincoln National Life Insurance Company

Date: October 21, 2022

Subject: Nursing Memorandum

Claim#: 1101521-1275120

Claimant: Timothy Jakubik

Date of Death: 10/13/2021

2nd level LIFE Appeal

Clinical Assessment:

This file has been reviewed in its entirety on appeal. Information summarized below includes those portions of the records received that have relevance to the questions and time frame identified for this review.

Timothy Jakubik is a 52 y/o individual with a date of death of 10/13/2021. Death certificate included and notes immediate cause of death as cardiopulmonary arrest and conditions leading to cause of death as pancreatic cancer with metastasis. Date of death reported as 10/3/2021. Death occurred at home. Manner of death reported as natural. Certificate issued on 10/19/2021. Medical history documented as dizziness, acute sinusitis, allergic rhinitis, and anxiety disorder. Request Clinical Review to assess voluntary spouse life benefit and for period of limited activity (POLA).

Diagnostic Studies / Procedures

7/31/2021 – MRCP (study of the hepatobiliary and pancreatic systems) completed for right upper quadrant pain. Impression includes no gallbladder disease appreciated with masses of liver and recommendation for follow up CT scan.

7/31/2021 – Ultrasound of gallbladder completed for right upper quadrant pain with impression of gallbladder filled with sludge and cyst noted on right lobe of liver.

8/1/2021 – Laparoscopic cholecystectomy performed for DX of acute cholecystitis.

8/3/2021 – MRI of abdomen completed with impression that includes findings suggestive of obstructing mass in the pancreas and body.

8/4/2021 – Biopsy of liver mass performed.

8/16/2022 – Chest x-ray completed with impression of no acute cardiopulmonary process detected.

8/16/2022 – Placement of IV port for treatment medications completed.

8/20/2021 – PET scan completed with impression that includes findings concerning for esophageal malignancy, pancreatic malignancy versus diffuse pancreatic metastatic disease, metastatic disease in left neck/mediastinum/upper abdomen/upper retroperitoneum/mesentery, hepatic/osseous metastases, favored infectious/inflammatory disease involving both lungs, and concern for cerebellar metastasis.

9/16/2021 – CT scan of abdomen/pelvis completed with impression that include mass in the pancreas, multiple masses in liver consistent with hepatic metastasis, and retroperitoneal/mesenteric adenopathy.

9/17/2021 – CT scan of thoracic and lumbar spine with impression that includes mild degenerative changes without aggressive osseous lesion or acute osseous abnormality.

9/18/2021 – Pathology report for distal esophageal mass biopsy. Comments note diffuse infiltrating carcinoma involving squamous and cardia type mucosa.

Medical Records

Hospital Records

7/31/2021 – Mr. Jakubik presented to emergency room with c/o abdominal pain and nausea for past 3 months. Provider notes ultrasound shows gallbladder filled with sludge without findings of gall bladder disease. Additional work up ordered resulting in admission for observation. General surgery consulted.

8/2/2021 – Mr. Jakubik admitted with reported ongoing abdominal pain with increased liver function studies. Mr. Jakubik is reported to be s/p removal of gallbladder on 8/1/2021. Additional work up ordered which notes pancreatic mass. Oncology consulted with recommendation for liver biopsy. Biliary stent placed during admission. Mr. Jakubik was discharged home with specialist follow up.

8/24/2021 – Mr. Jakubik presents to emergency room with c/o generalized weakness. EE has DX of pancreatic and liver cancer and received first chemotherapy session one week prior and weakness has worsened and so has appetite/intake. DX is nausea/vomiting and generalized weakness. Mr. Jakubik prescribed medication for nausea and given IV fluids and discharged home.

9/26/2021 – Mr. Jakubik presents with reported pancreatic and liver cancer, on chemotherapy and having bilateral leg pain for 6 weeks. Mr. Jakubik reports leg weakness that worsened about 3 days prior and can no longer walk. Exam documents 3/5 hip flexion (5/5 normal) in lower extremities. Mr. Jakubik reported to be with wife and in a wheelchair. DX is lower extremity weakness. Mr. Jakubik reported to have left against medical advice.

Oncology / Dr. Arvind Bhandari

8/9/2021 – Mr. Jakubik presents for follow up of possible liver metastasis with primary cancer of pancreas. Liver biopsy reported to show poorly differentiated carcinoma, favor pancreatic/biliary primary. Mr. Jakubik reports poor pain control with recurrent pain of abdomen and back. No abnormal exam findings noted. Lab work and diagnostic studies reviewed. Provider discusses cancer and metastasis and reported that cancer is not surgically resection and treatment would be palliative. Mr. Jakubik to undergo placement of IV and chemotherapy teaching provided.

8/12/2022 – Mr. Jakubik presents for follow up and noted to have Stage IV cancer and has presents for scheduled chemotherapy tentatively scheduled for 8/17/2022.

8/30/2021 – Mr. Jakubik presents for telemedicine visit. EE reported to have undergone first course of chemotherapy and having severe side effects. EE reported to have recurrent nausea, vomiting and a abdominal pain and had to go to emergency room to get IV fluids. Recovery was approximately 1 week. Mr. Jakubik reports difficulty swallowing and abdominal pain on and off. Provider recommends 20% reduction in dose. Mr. Jakubik reported to be scheduled for placement of a biliary stent.

9/9/2021 – Mr. Jakubik presents for follow up. Mr. Jakubik reported to have received first cycle of additional chemotherapy on 8/27/2021 and had problem with severe nausea, vomiting and generalized weakness lasting for more than a week. Mr. Jakubik reports difficulty swallowing and losing weight. Mr. Jakubik scheduled for an EGD (study of upper GI system) the following week. No abnormal exam findings documented. Provider recommends continue chemotherapy with 20% dose reduction. Mr. Jakubik will follow up in 4 weeks.

9/27/2021- Mr. Jakubik seen for cancer of pancreas with liver and bone metastasis, Stage IV. Date of DX is July 2021. Chemotherapy medications noted. Provider notes that EE underwent removal of gallbladder and noted to have recurrent abdominal pain after surgery and further work up found amass lesion at the head of pancreas as well as possible liver lesion suggestive of metastatic disease. Mr. Jakubik underwent CT guided biopsy of liver and is following up to discuss biopsy and treatment recommendations. EE reports recurrent abdominal pain and 20 lb. weight loss over last 3 months or so. Provider reports recent hospitalization for difficulty swallowing and underwent placement of an esophageal stent. Mr. Jakubik able to tolerate soft food, reports moderately severe back pain not adequately controlled with Fentanyl patch, and feeling weak in both lower extremities and needing assistance with walking. Physical exam documents no abnormal findings. Impression is poorly differentiated carcinoma of pancreas with metastasis to liver and bone, possible cerebellar metastasis, generalized weakness, and malnutrition. Mr. Jakubik referred to pain management, referred to physical therapy for muscle strengthening, MRI of brain/spine, food supplements recommended, and fentanyl dosage increased.

Oncology Peer Review / Dr. Andrew Schneider.

1/20/2022 - Primary impairing DX reported as Stage IV primary cancer of pancreas, nausea/vomiting, generalized weakness, liver cancer, abdominal pain, and fatigue. Co-morbid DX reported as elevated liver function testing, neutrophilic leukocytosis, acute cholecystitis, rising bilirubin, and dysphagia. Peer reviewer reports that Mr. Jakubik has restrictions and limitations from July 2021 to 10/3/2021 and would not have been able to perform the normal activities of a healthy person of the same age and sex for the time period in question. Peer reviewer recommends no work for this time period due to DX of stage IV pancreatic cancer given sickness and short life expectancy.

DX is stage IV pancreatic cancer with metastasis to liver. Death certificate issued on 10/19/2022 reports immediate cause of death as cardiopulmonary arrest and contributing conditions as pancreatic cancer with metastasis. Date of death reported as 10/3/2021. DX of pancreatic cancer made during work up for abdominal pain in July 2021. Mr. Jakubik was noted to have multiple medical appointments, hospital admission from 8/2/2021 to 8/4/2021 and emergency room visits on 7/31/2021, 8/24/2021, and 9/26/2021. Chemotherapy was initiated on 8/17/2021 and following first dosage, Mr. Jakubik noted to have severe reaction with generalized weakness on 8/24/2021 ER visit and unable to walk on 9/26/2021 ER visit. Given the DX of stage IV cancer, intensive treatment, and notation of side effects of chemotherapy with weight loss, fatigue, generalized weakness, and inability to walk; records support the conclusion of the Oncology peer review completed on 1/20/2022 by Dr. Andrew Schneider. Peer reviewer conclusion documents that from July 2021 to 10/3/2021 Mr. Jakubik would not have been able to perform the normal activities of a healthy person of the same age and sex for the time period in question.

Phyllis T., RN, MSN, CCM

Nurse Disability Consultant, Lincoln Financial Group